



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 7, 1939

Hon. Charles T. Banister
Criminal District Attorney
Corsicana, Texas

Dear Sir:

Opinion No. O-297

Re: Sale of beer in dry justice precinct
merged with a wet justice precinctYour request for an opinion on the following ques-
tion:

"If the sale of beer is legal in one pre-
cinct and it merges with another which does not
allow it to be sold, does the sale of beer be-
come legal in both precincts, or the latter
formed?"

has been received by this office.

The amendment of Sec. 20, Article 16, of the Con-
stitution, adopted August 24, 1935, reads as follows:

"(c) In all counties, justice's precincts
or incorporated towns or cities wherein the sale
of intoxicating liquors had been prohibited by
local option election held under the laws of the
State of Texas and in force at the time of the
taking effect of Section 20, Article XVI of the
Constitution of Texas, it shall continue to be
unlawful to manufacture, sell, barter, or ex-
change in any such county, justice's precinct or
incorporated town or city, any spirituous, vinous
or malt liquors or medicated bitters capable of
producing intoxication or any other intoxicants
whatsoever, for beverage purposes, unless and un-
til a majority of the qualified voters in such
county or political subdivision thereof voting
in an election held for such purpose shall deter-
mine such to be unlawful."

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The cases, *Ex Parte Pollard*, 103 SW 879; *Medford vs. State*, 74 SW 768; *Woods vs. State*, 75 SW 37; *Nelson vs. State*, 74 SW 502; *Ex Parte Fields*, 86 SW 1022; *Walling vs. King*, 87 SW (2nd) 1074; and *Coker vs. Kmeick*, 87 SW (2nd) 1076 hold in effect, notwithstanding the fact, the Commissioners' Court has the clear legal right after a local option election has been held in a justice precinct may add same to some other justice precinct within the county, but in so doing, said Commissioners' Court does not and cannot under the law in any way interfere with local option as adopted, and its action does not invalidate the local option election formerly held in said territory, but that it requires a vote of the people living within the original bounds of the justice's precinct which put local option into effect to nullify the same.

On May 1, 1936, Hon. Leon O. Moses, Assistant Attorney General, rendered an opinion holding that a justice precinct which is wet may not have its territory merged by the Commissioners' Court so as to take in dry territory and no permit can be issued within said territory.

This Department has repeatedly held and there are numerous decisions in support thereof that the merging of a dry justice precinct with a justice precinct in which the sale of beer or other liquor is legal does not, in any way, effect the status of the dry territory so merged or consolidated with the wet territory.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this Department that where the sale of beer is legal in one precinct and it merges with another justice precinct which does not allow beer to be sold, the sale of beer does not become legal in the territory wherein the sale of beer or other liquors were prohibited by reason of being merged and consolidated with the wet territory.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Ardell Williams
Assistant

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APPROVED

(signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS